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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 1147

PASQUALE ARANISI, *Appellant*,

v.

GRACE EVELYN PEREZ, ET AL., *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

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v.

GRACE EVELYN PIERCE, ET AL., *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Supreme Court of Errors of the State of Connecticut, the highest Court of that State, entered on February 13, 1957, affirming the judgment of the Superior Court of Fairfield County, State of Connecticut, entered on January 28, 1955, holding appellant liable to appellees in the total amount of $35,000 plus costs.

Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINION BELOW

The opinion and dissenting opinion of the Supreme Court of Errors of the State of Connecticut are reported in 144 Conn. 241, 129 A. 2d 606. Copies of these opinions and of the judgment of the Supreme Court of Errors are attached hereto as an Appendix.

JURISDICTION

This suit was brought by appellees under Section 4307 of the General Statutes of Connecticut (1949 Rev.) to recover against appellant money damages for injuries sustained by appellees in an automobile accident with third parties. The final judgment of the Supreme Court of Errors of the State of Connecticut affirming a judgment for appellees of $35,000 and costs against appellant was entered on February 13, 1957, and notice of appeal was filed in that court (at Fairfield County, Connecticut), on May 11, 1957. The jurisdiction of this Court to review this final judgment by direct appeal is conferred by Title 28, U. S. Code, Section 1257(2), authorizing appeals to this Court in cases where the statute of a state is challenged as repugnant to the Constitution, and its validity has been sustained by the state court. The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203; *Nashville C. & St. L. Ry.* v. *Walters*, 294 U. S. 405; *Smith* v. *Cahoon*, 283 U. S. 553; *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710.

QUESTIONS PRESENTED

Whether Section 4307 of the General Statutes of the State of Connecticut (1949 Rev.) which, both by its terms and as construed and applied by the highest court of the State of Connecticut, provides that any person who makes a sale of alcoholic liquor to an intoxicated person shall pay damages for any injury to person or property caused a third person "in consequence of such intoxication" regardless of whether the sale in any way caused or contributed to the intoxication, denies appellant due process of law and the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution by:

1. imposing upon him an unlimited liability for injuries to persons and property without requiring that any act or omission on his part in some way cause or contribute to the injuries and without permitting him to show that his acts or omissions in no way caused or contributed to the injuries;

2. imposing upon him, in effect, a criminal liability

   (a) resulting in a penalty different from and greater than the penalty imposed upon others for the same act;

   (b) resulting in a severe and oppressive penalty grossly disproportionate to and having no relation to his act;

   (c) without affording him traditional and fundamental criminal safeguards.

STATUTE INVOLVED

Section 4307 of the General Statutes of Connecticut (1949 Rev.) provides:

> "If any person, by himself or his agent, shall sell any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, shall thereafter injure the person or property of another, such seller shall pay just damages to the person injured, to be recovered in an action under this section."

STATEMENT

Appellant, Pasquale Albanese, was at all times relevant hereto the owner of a place of business on Route 25 in Newtown, Connecticut, where alcoholic beverages were sold for consumption on the premises. On the night of September 28, 1952, at about 11:00 P.M., one Floyd F. Gilleo and his nephew, Floyd H. Gilleo, visited appellant's place of business, and Floyd F. Gilleo was sold two glasses of beer. Sometime before midnight the Gilleos left appellant's place of business and, in an automobile owned and operated by Floyd F. Gilleo, proceeded in a northerly direction along Route 25 for about a mile when their automobile collided with the right rear of an automobile being operated by appellee Grace E. Pierce and owned by her husband, appellee Gordon D. Pierce, who was a passenger at the time. The Pierce car had been parked, with its rear facing the road, in a driveway adjoining Route 25 from the east. (App. pp. 1a-2a).

Appellees brought suit in the Superior Court of Fairfield County, Connecticut, against Floyd F. Gilleo, claiming damages from the alleged negligent operation of his automobile and against appellant under

Section 4307. Floyd F. Gilleo counterclaimed, and Floyd H. Gilleo filed a suit against appellees for damages, alleging negligence on the part of appellees. All of the suits were tried together.

At the conclusion of the trial the court instructed the jury that to find appellant liable under Section 4307 for appellees' injuries it need find only that appellant had made a sale of alcoholic liquor to an intoxicated person and that appellees' injuries resulted as a consequence of the intoxication (R. 46-47). Appellant objected to this charge and construction of the statute on the ground that it did not require proof that appellant in some way caused or contributed to the injuries for which he was being sued (R. 54-46). Appellant's objection was overruled, and he took an exception (R. 55). After some deliberation, the jury requested to be instructed as to the proper verdict to be returned in the event it should find that both the Pierces and the Gilleos were negligent. The trial court instructed that in that event neither the Pierces nor the Gilleos would be liable (R. 57-58). Thereafter the jury returned verdicts in favor of Floyd F. Gilleo on the suit against him by appellees, and in favor of appellees on the counterclaim by Floyd F. Gilleo and in the suit of Floyd H. Gilleo. In appellees' suit against appellant the jury returned a verdict in favor of Grace E. Pierce in the amount of $25,000 and in favor of Gordon D. Pierce in the amount of $10,000 (R. 60-61). Judgment was entered against appellant in these amounts plus costs (R. 12-13).

Appellant appealed to the Supreme Court of Errors, raising, *inter alia*, the constitutional issue now presented here. The opinion of the Supreme Court

of Errors, after noting the nature of the charge to the jury by the trial court, recites (App. p. 3a):

> "The defendant claims that such an interpretation renders the act unconstitutional because it imposes liability irrespective of any causal connection between the sale of the intoxicating liquor to an intoxicated person and the injury which follows as a result of the intoxication. Such an interpretation, so the defendant alleges, imposes liability without fault and makes the statute arbitrary, vague and unreasonable and therefore violative of the equal protection and due process provisions of the federal and state constitutions. U. S. Const. Amend. XIV § 1; Conn. Const. Art. I, §§ 1, 12."

That Court, stating that with respect to alcoholic liquors the police power of the state "runs broad and deep" (App. p. 4a), and that "To hold that the act is unconstitutional unless it is interpreted to require proof of a causal relationship between the sale of the liquor and the intoxication in consequence of which the injury is inflicted would be to destroy in large part the remedial effect which the statute was intended to have" (App. p. 8a), held that (*ibid.*):

> "* * * § 4307 is not arbitrary or unreasonable and that it is a valid legislative exercise of the police power of the state."

One judge, believing the statute to be unconstitutional, dissented (App. pp. 16a-17a).

THE QUESTIONS ARE PROPERLY BEFORE THE COURT AND ARE SUBSTANTIAL.

Section 4307 of the General Statutes of Connecticut, the constitutional validity of which is here in issue, is a unique aberration of the common "Dram Shop"

or "Civil Liability" acts which exist in several States. These acts, except in Connecticut, have as their common purpose the imposition of liability on one who, by sale of intoxicating liquor, causes or contributes to intoxication which results in damage or harm. Section 20 of the Volstead Act (Act of October 28, 1919, c. 85, 41 Stat. 305, 313) was a "Dram Shop" provision. Such acts are a legitimate modification of the rule of the common law, under which there was no liability for such conduct because the voluntary consumption of the intoxicating liquor broke the chain of proximate causation between the sale and the injury. These acts have been generally upheld by the courts as valid exercises of the police power. See, *e.g.*, *Shell Oil Co.* v. *Superior Court*, 213 Cal. 576, 2 P. 2d 801 (1931) (upholding Section 20 of the Volstead Act); *Franklin* v. *Schermerhorn*, 8 Hun. (N.Y.) 112 (1876); *Kennedy* v. *Garrigan*, 23 S.D. 265, 121 N.W. 783 (1909).

The Connecticut statute here involved, however, is radically different from all other such legislation. All other "Dram Shop" acts explicitly require that there be a causal connection between the sale of intoxicating beverages by the person charged with liability and the intoxication which results in the injuries sued for. The Illinois statute (Jones, Ill. Stat. Ann. § 68.042 (1935 ed.)) is typical:

> "Every . . . person, who shall be injured, in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving alcoholic liquor,

have caused the intoxication, in whole or in part, of such person . . ." (Emphasis added.)

Section 20 of the Volstead Act (41 Stat. 305, 313) provided:

> "Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, *have caused or contributed to such intoxication* . . ." (Emphasis added.)

This requirement of a causal connection has been uniformly insisted upon by the many decisions applying the various acts, other than the present Connecticut Act. *E.g., Osborn* v. *Leuffgen*, 381 Ill. 295, 45 N.E. 2d 622 (1943); *Macleod* v. *Gerger*, 53 Ia. 615, 6 N.W. 21 (1880); *Currier* v. *McKee*, 99 Me. 364, 59 Atl. 442 (1904); *Hahn* v. *City of Ortonville*, 238 Minn. 428, 57 N.W. 2d 254 (1953); *Jones* v. *Bates*, 26 Neb. 693, 42 N.W. 751 (1889); *Healey* v. *Cody*, 104 Vt. 463, 161 Atl. 151 (1932).

Until 1933, Connecticut did not differ. See Connecticut General Statutes (1918 Rev.), Sec. 2815. When the Eighteenth Amendment was in the process of repeal, the General Assembly enacted the present statute. Apparently, however, it was never considered and interpreted by the Supreme Court of Errors until 1955. In the second of two cases involving the present section to reach that court that year (the first was *Staples* v. *Lucas*, 142 Conn. 452, 115 A. 2d 337), the court made clear that Section 4307 "differs fundamentally from its predecessor, § 2815 of the Revision

of 1918. * * * under § 2815 liability was predicated upon proof of a causal connection between the sale of the intoxicating liquor and the injury. Under § 4307 it is not." *London and Lancashire Indemnity Co.* v. *Duryea*, 143 Conn. 53, 57, 119 A. 2d 325, 327.

The *Duryea* case was a declaratory judgment action by an insurance company to determine whether a policy indemnifying a tavern keeper from liability for injuries "'caused by accident and arising out of' the hazard covered by the policy"—the ownership and operation of the tavern—covered liability under Section 4307. The court reached no constitutional issues, because it held that the policy did not cover this liability. It said (143 Conn. at p. 59, 119 A. 2d at p. 328):

> "The delict defined by § 4307 is not the sale of liquor to create a condition of intoxication. It is rather the sale of liquor to one who is already intoxicated. * * *. The policy insures only such liability as comes into being if some delict on the part of the insured proximately causes an injury. It does not insure a liability, such as that stated in § 4307, which eventuates without any causal connection between the delict and the injury."

The present case is the first in which the construction of Section 4307 laid down in the *Duryea* case has been applied by the Connecticut Supreme Court to hold a seller liable. The court explicitly rejected appellant's argument that in order to sustain the constitutionality of Section 4307 it should be construed as requiring, like all other "Dram Shop" acts, some causal connection between the sale and the injuries (App., pp. 3a, 8a).

1. Section 4307 cannot be sustained as a reasonable exercise of the police power of the states. This power,

though very broad and not susceptible of precise definition, is nonetheless limited by the constitutional requirement that it be exercised only in a manner appropriate to achieve permissible objectives and not arbitrarily or unreasonably. *Nashville C. & St. L. Ry.* v. *Walters,* 294 U. S. 405, 415; *Panhandle Co.* v. *Highway Commission,* 294 U. S. 613, 619, 622. Section 4307 fails to meet this requirement.

There can be no doubt, in light of the opinion below, that Section 4307 imposes liability notwithstanding that the injury is totally unrelated to the act of the person held liable. Nevertheless, the court below apparently regards this as a civil liability. In *Staples* v. *Lucas,* 142 Conn. 452, 456, 115 A. 2d 337, 339 (1955), the court stated that the section "creates a new tort liability." Tort liability, of course, assumes a causal relation between the acts or omissions of the person held liable and the injuries for which liability is imposed. The opinion below seeks to bypass this vital issue by asserting that the legislature reasonably could find that "there would always be such a reasonable relationship between a sale in violation of the law and the injury * * * as would warrant a departure from common-law concepts of proximate causation and the substitution of a new basis of liability." (App. p. 6a).

This analysis overlooks the vast difference between a statute which does no more than change the common-law rule which made the voluntary act of drinking break the causal chain, and this unique legislative incursion into absolute liability where no causal relationship at all is necessary between the delict and the injury. The language of the court below, indeed, suggests that the legislature has purported to create, and the court has been willing to approve, an irre-

buttable presumption that such a causal relationship exists in every case, and, therefore, that a causal relationship not only need not be proved, but, indeed, may not be disproved, in any particular case. Thus, upon proof of a sale to an intoxicated person who in consequence of his intoxication causes injury to another, it is irrebuttably presumed that the sale contributed to the intoxication and therefore to the injury. This presumption, if such it is, is not a rule of evidence, justifiable by considerations of convenience, but a rule of law arbitrarily imposing liability regardless of the actual facts and depriving a defendant of an opportunity to show the actual facts. It operates to prevent a defendant from offering persuasive evidence to the jury that he was in no way responsible for the injuries for which he is sued, and makes such evidence irrelevant.

One cannot, for obvious reasons, assert what the jury would have decided in the present case had the statute not been given its effect as a conclusive presumption. One *can* assert that the instruction of the trial court, to which appellant took exception, was highly prejudicial. Moreover, as the Court stated in holding invalid the presumption involved in *Bailey* v. *Alabama*, 219 U. S. 219, 235, the Court "in considering the natural operation and effect" of the statute is "not limited to the particular facts of the case at bar." Section 4307, as construed, forecloses proof that the liquor sold and consumed was of such quantity, or quality, or was sold and consumed so soon before the accident that it could not have affected the purchaser's degree of intoxication. Indeed, it would foreclose proof that the liquor sold was never consumed at all, or was immediately regurgitated. Many other situations come readily to mind.

We need not now decide whether Connecticut might, by a rebuttable presumption or otherwise, impose upon a defendant in the position of appellant the burden of coming forward with such proof, or of sustaining the defense of lack of causal relationship. What we do assert is that a statute which, in effect, creates a presumption "conclusive of the rights of the person against whom raised," may not be sustained against a due process objection. *Manley* v. *Georgia*, 279 U. S. 1, 6. "The power to create presumptions is not a means of escape from constitutional limitations." *Bailey* v. *Alabama*, 219 U. S. 219, 239. A presumption, to be consistent with due process, "must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense" or "shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue." *Mobile J. & K. C. R.R.* v. *Turnipseed*, 219 U. S. 35, 43; *Tot* v. *United States*, 319 U. S. 463. As was held in *Western Atl. R. Co.* v. *Henderson*, 279 U. S. 639, 642:

> "A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment. Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property."

Such is the nature of Section 4307.

The court below appears to have believed (App. pp. 7a-8a), that in any event appellant cannot complain because his liquor permit "is a matter of privilege and not a matter of right." "If one desires to engage in the liquor business," the court asserts, "and secures

upon his own application a permit to do so, he assumes of necessity the risk of a great variety of situations which could impose liability upon him." Certainly, however, even one who engages in an occupation for which a permit is required—who operates as a matter of privilege—is entitled to fair and reasonable treatment. Cf. *Weiman* v. *Updegraff*, 344 U. S. 183. Nor is there any reason to believe that permitting appellant the right to show no causal connection between his acts and the injuries for which he must pay compensation would "destroy in large part the remedial effect which the statute was intended to have." (App., p. 8a). It has not appeared to other States that this legislative absolutism is essential to accomplish the desired objectives. Indeed, if Section 4307 is intended to hold purveyors of alcoholic beverages liable in tort for the consequences of their acts, it is difficult to see how it can be "destroyed" by permitting such persons to show, if they can, that the particular injuries involved were not such consequences.

2. Section 4307 may, on the other hand, be interpreted as imposing a penalty rather than a civil liability. That interpretation, in fact, seems to be much more in keeping with the true nature of the section as it has been interpreted and applied by the court below. That view, however, raises equally difficult constitutional issues. The liability imposed would be in the nature of a penalty not fixed by law or related to the nature of the offense and payable to an arbitrarily chosen individual rather than to the State. Such a penalty, varying fortuitously and without limits from case to case, would offend both the due process and equal protection clauses of the Fourteenth Amendment. A law may not lay "an

unequal hand on those who have committed essentially the same quality of offense." *Skinner* v. *Oklahoma*, 316 U. S. 535, 541. The Fourteenth Amendment "requires that no different degree or higher punishment shall be imposed on one than is imposed on all for like offenses." *Moore* v. *Missouri*, 159 U. S. 673, 678. In addition, "there are limits beyond which penalties may not go" even if the penalties are equally applied to all those equally situated. *Seaboard Airline Ry.* v. *Seegers*, 207 U. S. 73, 78. Penalties may not be "so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable." *St. Louis I. Mt. & So. Ry. Co.* v. *Williams*, 251 U. S. 63, 67; *Life and Casualty Co.* v. *McCray*, 291 U. S. 566, 571; *Ex parte Young*, 209 U. S. 123, 145. Appellant is penalized in the amount of $35,000 for selling two glasses of beer to an adult man who was later found to be intoxicated; others may, for the same quality of act, be penalized, under Section 4307, not at all or only in a much smaller amount; still others may be penalized even more. A statute authorizing the arbitrary imposition of extreme disproportionate penalties cannot be condoned, however desirable its objective.

Moreover, construed as a criminal statute, Section 4307 contains none of the traditional safeguards of criminal statutes—for example, indictment, or proof beyond a reasonable doubt. Appellant was tried in an ordinary civil proceeding. Indeed, appellant's trial was — improperly* — joined with the trial of three actions based on negligence. Section 4307 cannot be

* The Connecticut Supreme Court, although specifically disapproving of this, did not consider it sufficient to require a new trial (App. p. 14a).

upheld as a valid exercise of Connecticut's power to establish and punish crimes. Cf. *Bailey* v. *Alabama*, 219 U. S. 236.

CONCLUSION

For the foregoing reasons, we submit that the questions presented are substantial and warrant full briefs and oral argument in this Court.

Respectfully submitted,

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